

### **REMARKS**

Claims 12-16 are pending. By this amendment, claim 12 is amended, claim 15 is cancelled, and new claim 17 is added. No new matter is introduced. Support for the amendments and new claim may be found at least in Figures 1 and 2 of the specification. Reconsideration and allowance of the claims in view of the above amendments and the remarks that follow are respectfully requested.

Entry of the above amendments is proper under 37 C.F.R. § 1.116 because the amendments (1) place the claims in better form for appeal if needed; and (2) do not introduce any elements requiring further search by the Examiner.

#### **Claim Rejections Under 35 U.S.C. §103**

On page 2 the Office Action rejects claims 12-14 under 35 U.S.C. §103 (a) over U.S. Patent 6,394,323 to McClean et al. (hereafter McClean) in view of U.S. Patent 6,287,106 to Learn et al. (hereafter Learn). Claim 12 is amended to incorporate and more specifically recite the features of claim 15. Claim 15 is cancelled. Claim 15 is rejected on page 4 of the Office Action under 35 U.S.C. §103 (a) over McClean and Learn, and further in view of U.S. Patent 4,993,606 to Bolen, Jr. et al. (hereafter Bolen). Specifically, the Office Action asserts on page 4 that Bolen teaches the features of claim 15 in Figure 6, element 39. This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness ... the prior art reference (or references when combined) must teach or suggest all of the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and MPEP § 2142. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and MPEP § 2143.03.

McClean is directed to a dispenser package for fluent products and method of manufacture. Learn is directed to an articulated mold cavity for injection molding a dispensing cap. Bolen is directed to a two-piece dispensing closure having an internally threaded base with a dispensing orifice in the front section and an elevated rear land that has a pivot recess adapted to receive a separate lid. However, as clearly shown in Figure 6 of Bolen, a single catch 39 is connected to the plug 38. In fact, the single catch 39 is a part of the plug 38. The joint device (including the catch 39 and the plug 38) holds the flap in closed position and seals the orifice 24.

Therefore, Bolen clearly does not have two or more depending catches that are separate devices being distantly positioned from the plug.

Contrary to McClean, Learn, and Bolen, amended claim 12 recites: “the flap is releasably held in closed positions by two or more depending catches that interact with complimentary receiving areas on the end wall, the two or more depending catches being separate devices that are distantly positioned from the plug,” (emphasis added). As clearly shown in Figure 1 of the present application, two or more depending catches 48 are positioned distantly from the plug 26. The depending catches 48 hold the flap in closed position, whereas the plug 26 seals the flap 13. Similarly, in Figure 2 of the present application, two or more depending catches 49 are positioned distantly from the plugs 27. The depending catches 49 hold the flap in closed position, whereas each of the plugs 27 individually seals the flap 14. As noted above, none of the references disclose or suggest these features. Therefore, amended claim 12 is allowable.

Claims 13-14 are allowable at least because they depend from allowable claim 12 and for the additional features they recite. Withdrawal of the rejection of claims 12-14 under 35 U.S.C. §103 (a) is respectfully requested.

On page 4 the Office Action rejects claims 15-16 under 35 U.S.C. §103 (a) over McClean and Learn, and further in view of Bolen. This rejection is respectfully traversed.

Claim 15 has been cancelled, rendering the rejection of claim 15 moot.

Claim 16 is allowable at least because it depends from allowable claim 12 and for the additional features it recites. Withdrawal of the rejection of claim 16 under 35 U.S.C. §103 (a) is respectfully requested.

#### **New Claim Is Allowable**

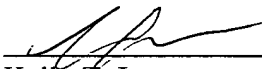
For at least the same reason as noted above with respect to claim 12, McClean, Learn, and Bolen, individually and in combination, do not disclose or suggest “wherein the flap is releasably held in closed positions by two or more depending catches that interact with complimentary receiving areas on the end wall, the two or more depending catches being separate devices that are distantly positioned from the plug,” as recited in new claim 17. Therefore, new claim 17 is allowable.

In view of the above remarks, Applicant's respectfully submit that the application is in condition for allowance. Prompt examination and allowance are respectfully requested.

Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

Date: **October 19, 2005**

  
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